

Provisions in the Trade Marks Act (Cap. 332, 2005 Rev. Ed.) relating to absolute grounds of refusal

Interpretation

2. —(1) In this Act, unless the context otherwise requires —

...

"sign" includes any letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape, colour, aspect of packaging or any combination thereof;

"trade mark" means any sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person;

Grounds for refusal of registration

Absolute grounds for refusal of registration

7. —(1) The following shall not be registered:

- (a) signs which do not satisfy the definition of a trade mark in section 2 (1);
- (b) trade marks which are devoid of any distinctive character;
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services; and
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

(2) A trade mark shall not be refused registration by virtue of subsection (1) (b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.

(3) A sign shall not be registered as a trade mark if it consists exclusively of —

- (a) the shape which results from the nature of the goods themselves;
- (b) the shape of goods which is necessary to obtain a technical result; or
- (c) the shape which gives substantial value to the goods.

(4) A trade mark shall not be registered if it is —

- (a) contrary to public policy or to morality; or
- (b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).

(5) A trade mark shall not be registered if or to the extent that its use is prohibited in Singapore by any written law or rule of law.

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

(7) Notwithstanding subsection (2), a trade mark shall not be registered if it contains or consists of a geographical indication in respect of a wine or spirit and the trade mark is used or intended to be used in relation to a wine or spirit not originating from the place indicated in the geographical indication.

(8) Subsection (7) shall apply whether or not the trade mark has, or is accompanied by, an indication of the true geographical origin of the wine or spirit, as the case may be, or an expression such as “kind”, “type”, “style”, “imitation” or the like, and irrespective of the language the geographical indication is expressed in that trade mark.

(9) A trade mark shall not be refused registration by virtue of subsection (7) if the application for its registration had been made in good faith, or if it had been used continuously in good faith in the course of trade by the applicant for its registration or his predecessor in title, either —

(a) before 15th January 1999; or

(b) before the geographical indication in question is protected in its country of origin.

(10) A trade mark shall not be refused registration by virtue of subsection (7) if the geographical indication in question —

(a) has ceased to be protected; or

(b) has fallen into disuse,
in its country of origin.

(11) A trade mark shall not be registered in the cases specified in sections 56 and 57.

(12) The Minister may make rules to provide that a sign specified in the rules shall not be registered as a trade mark, or shall not be so registered unless such conditions as may be prescribed are met.

(13) A trade mark shall not be registered if or to the extent that the registration contravenes any rule made under subsection (12).

National emblems, etc., of Convention countries: Article 6ter of Paris Convention, etc.

56. —(1) A trade mark which consists of or contains the flag of a Convention country shall not be registered without the authorisation of the competent authorities of that country, unless it appears to the Registrar that use of the flag in the manner proposed is permitted without such authorisation.

(2) A trade mark which consists of or contains the armorial bearings or any other state emblem of a Convention country which is protected under the Paris Convention or the TRIPS Agreement shall not be registered without the authorisation of the competent authorities of that country.

(3) A trade mark which consists of or contains an official sign or hallmark adopted by a Convention country and indicating control and warranty shall not, where the sign or hallmark is protected under the Paris Convention or the TRIPS Agreement, be registered in relation to goods or services of the same, or a similar kind, as those in relation to which it indicates control and warranty, without the authorisation of the competent authorities of the country concerned.

(4) The provisions of this section as to national flags and other state emblems, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.

(5) Nothing in this section prevents the registration of a trade mark on the application of a national of a country who is authorised to make use of a state emblem, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(6) Where by virtue of this section the authorisation of the competent authorities of a Convention country is or would be required for the registration of a trade mark, those authorities are entitled to restrain by injunction any use in the course of trade of the trade mark in Singapore without their authorisation.

Emblems, etc., of certain international organisations: Article 6ter of Paris Convention, etc.

57. —(1) This section shall apply to —

(a) the armorial bearings, flags or other emblems; and

(b) the abbreviations and names,

of international intergovernmental organisations of which one or more Convention countries are members.

(2) A trade mark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention or the TRIPS Agreement shall not be registered without the authorisation of the international organisation concerned, unless it appears to the Registrar that the use of the emblem, abbreviation or name in the manner proposed —

(a) is not such as to suggest to the public that a connection exists between the organisation and the trade mark; or

(b) is not likely to mislead the public as to the existence of a connection between the user and the organisation.

(3) The provisions of this section as to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.

(4) Where by virtue of this section the authorisation of an international organisation is or would be required for the registration of a trade mark, that organisation is entitled to

restrain by injunction any use in the course of trade of the trade mark in Singapore without its authorisation.

(5) Nothing in this section shall affect the rights of a person whose bona fide use of the trade mark in question began before 23rd February 1995 (when the relevant provisions of the Paris Convention entered into force in relation to Singapore).